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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 6th October 2004

No. 8867–li/1(B)-92/1991(pt)-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th July 2004 Industrial Dispute Case No. 27/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Khurda Central Co-op. Bank and its Workman Shri Bhaskar Prasad Mohanty was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 27 OF 1992

Dated the 30th July 2004

#### *Present :*

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)  
Presiding Officer, Labour Court  
Bhubaneswar.

#### *Between :*

The Management of	..	First Party–Management
M/s. Khurda Central Co-op. Bank .		
And		
Its Workman	..	Second Party–Workman
Shri Bhaskar Prasad Mohanty		
Ex-cadre Secretary.		

#### *Appearances :*

For the First Party–Management	..	Shri S. C. Mohapatra
For the Second Party–Workman	..	Shri R. K. Mohanty, Advocate

## A W A R D

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 2785(5)-L. E., dated the 22nd February 1992 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“ Whether the action of the management in terminating the services of Shri Bhaskar Prasad Mohanty, ex-cadre secretary of Khurda Central Co-operative Bank, Khurda with effect from the 4th September 1990 is legal and/or justified ? If not, to what relief Shri Mohanty is entitled ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present reference is that Workman Bhaskar Prasad Mohanty was appointed as Cadre Secretary on *ad hoc* basis by the order of Authorised Officer of the Khurda Central Co-operative Bank, Khurda (in short the management) vide letter No. 66 dated the 10th July 1989 and was attached to Branch Manager, Handloom (Head office) on usual pay scale of a Cadre Secretary of the Bank. On receipt of the order the workman joined in the services of the management on the 10th July 1989 although he was aware of the fact that the service was purely temporary in nature and would be terminated at any time without assigning any reason whatsoever. He continued in his employment till he was terminated from service with effect from the 6th October 1989 (A.N.) but his services were extended for one month i. e. from the 7th October 1989 (F. N.) to the 5th November 1989 (A.N.). Thereafter the period of service was extended from time to time with short breaks on his request on the basis of fresh application and he was allowed to continue in the said rest till the 4th September 1990. The last order of appointment was issued to him on the 18th July 1990 by the management and thereafter no further extension of service was given to him resulting in automatic cessation of service. Accordingly he made a representation to the management praying for extension of his service but to his misfortune the same was rejected. According to him, such rejection of his representation without assigning any reason was arbitrary and unjustified. The further case of the workman is that after such termination he made several efforts by approaching different authorities but all his efforts in this respect bore no fruit. However the matter was referred to the Assistant Labour Officer, Khurda but the conciliation proceeding initiated by the Assistant Labour Officer, Khurda ended in failure. Ultimately the matter was referred to this Court by the Government in the Labour & Employment Department for adjudication. According to the workman, the action of the management in terminating his service with effect from the 4th August 1990 was illegal, arbitrary and unjustified. Under the above circumstances while challenging the legality and justifiability of the action of the management in terminating his service with effect from the 4th September 1990, the workman has now prayed for his reinstatement with continuity of service along with compensation. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, since the services of the workman were no more required by the management, he was terminated from service with effect from the 4th September 1990 as per the Act and Rules of the Orissa State Co-operative

Societies Act, 1962. Besides, the Registrar, Co-operative Societies, Orissa in their letter No. 24351, dated the 23rd September 1989 had already instructed not to entertain any contingent/*ad hoc* appointment beyond the approved strength and such post, if any, existing and continuing in the Bank should be terminated forthwith. That apart the Government of Orissa in Agriculture and Co-operation Department in their letter No. 6579, dated the 17th April 1990 had also instructed to stop the appointments of all temporary and *ad hoc* posts. It is specifically averred in the written statement that in view of the above circulars and orders of the Government, the management was constrained to effect such termination from the 4th September 1990 and the action taken in this respect was legal and justified. According to the management, the claim of the workman is not at all justified and therefore not tenable in the eye of law. Accordingly the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

### ISSUES

- (i) What was the reason for termination of the services of the workman, ex-Cadre Secretary with effect from the 4th September 1990 ?
- (ii) Is such termination legal and justified ? If not, to what relief ?

6. The workman in support of his case has examined himself as W. W. 1 and another witness namely, Bijaya Mohapatra as W. W. 2 and has relied upon the xerox copies of the documents such as, appointment order, dated the 10th July 1989, extension orders, order No. 922, dated the 19th August 1989 with regard to the allotment of work, representation to the Chief Minister of Orissa, representation for extension of service, rejection order, dated the 21st November 1990, representation to the Deputy Registrar, dated the 21st September 1990, order, dated the 19th August 1989 and the order, No. 7502, dated the 14th March 1989 marked as Exts. 1 to 8 respectively. On the other hand, the management has examined one Sarat Chandra Mohapatra, Umesh Chandra Narendra and Bhagirathi Paikray as M. Ws. 1, 2 and 3 respectively and has relied upon the xerox copies of the documents such as, letter No. 24331, dated the 23rd September 1989, letter No. 6579, dated the 17th April 1990, Vakalatnama and audit reports for the years 1990-1991, 1991-1992 and 1992-1993 marked as Exts. A to F respectively in support of its case.

### FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman, Bhaskar Prasad Mohanty clearly emerges that he joined in the services of the management on the 10th July 1989 as Cadre Secretary on temporary basis and his service was extended from time to time till the 4th September 1990 and thereafter no further extension was given to him. Although he made representation to the management but the same was rejected. Thereafter he made another representation to the Chief Minister, Grievance Cell on the 11th October 1990 and ultimately the matter was

referred to the District Labour Officer on the 10th December 1990 who also referred the matter to the Assistant Labour Officer for conciliation. Efforts were made for conciliation but of no avail. The conciliation proceeding initiated by the Assistant Labour Officer ended in failure. During the course of his evidence, he has duly proved the xerox copies of the office order No. 66, dated the 10th July 1989 relating to his appointment as Cadre Secretary on *ad hoc* basis and other office orders relating to extension of service from time to time till the 4th September 1990, allotment of work, representation to the Chief Minister, Orissa, Bhubaneswar, representation to the management, rejection order, another representation made to the Deputy Registrar, Co-operative Societies, Puri, allotment of work and the office order No. 7502, dated the 14th March 1989 of the Registrar, Co-operative Societies, Orissa marked as Exts. 1 to 8 respectively. He admits during cross-examination that on expiry of each term of appointment further extension was granted by the management on the basis of time to time written request made by him. The evidence of W. W. 2 Bijaya Mohapatra goes to show that the Board had not passed any resolution for termination of the services of the workman. During cross-examination he has denied his knowledge when the workman was retrenched.

8. The management, on the other hand, has examined three witnesses in support of its case. The perusal of the evidence of M. W. 1 clearly emerges that the workman was appointed as Cadre Secretary on *ad hoc* basis with effect from the 10th July 1989 for a period of 89 days, which period was extended from time to time on the strength of his application till the 4th September 1990. He has categorically stated that as the financial condition of the Bank was not sound, the then Registrar, Co-operative Societies instructed the concerned Bank to terminate the services of *ad hoc* employees. On the basis of such instruction no further extension was given to the workman. During his evidence, he has proved the letter of the Registrar, Co-operative Societies, Orissa dated the 23rd September 1989 and the letter of the Secretary to Government, dated the 17th April 1990 with regard to the termination of services of *ad hoc* employees marked as Exts. A and B respectively. M. W. 1 has further stated in his evidence that after termination the workman has been practising as an Advocate in Khurda Bar and in this connection he has duly proved one Vakalatnama marked as Ext. C. In his cross-examination he has clearly stated that the workman was continuing on *ad hoc* basis with effect from the 10th July 1989 till the 4th September 1990 on extension basis. It has been suggested to him that the workman was illegally terminated from service to which he has given a negative reply. It is in the evidence of M. W. 2 that the workman was working as Cadre Secretary on *ad hoc* basis from 10th July 1989 for 89 days, which period was extended from time to time with short breaks till the 4th September 1990 and thereafter no further extension was given on the basis of the letters vide Exts. A and B respectively. He has categorically stated that the workman was neither a Bank employee nor a cadre employee. It has been suggested to him that the services of the workman were not terminated due to financial crisis to which he has negatively replied. M. W. 3 in his evidence has categorically stated that due to constant loss of the Bank the services of the *ad hoc* employees including the services of the workman were terminated. In this respect he has duly proved the audit reports for the years 1990-1991, 1991-1992 and 1992-1993 marked as Exts. D, E and F respectively showing the constant loss sustained by the Bank. It has been suggested during cross-examination that the reports are not genuine and that the management did not incur any loss for the aforesaid period to which he has given negative replies.

As a result of this amendment, termination of service under the contractual stipulation or discharge simpliciter on the basis of non-renewal of the contract of employment will no more constitute “retrenchment” as defined in Section 2 (oo) of the Industrial Disputes Act. If such termination do not constitute “retrenchment”, there is no scope of application of Section 25-F

of the Act to such cases of termination. In that view of the matter, the claim already made by the workman to the effect that he is entitled to reinstatement since the provisions of Section 25-F of the Act was not complied within the case of his termination is without substance and therefore merits no consideration. It has been specifically pleaded by the management that since the services of the workman was no more required by the management, he was terminated from service with effect from the 4th September 1990 as per the Acts and Rules of the Orissa State Co-operative Societies Act, 1962. Besides, the Registrar, Co-operative Societies, Orissa had already instructed in letter No. 24351, dated the 23rd September 1998 vide Ext. A not to entertain any contingent/*ad hoc* appointment beyond the approved strength and such post, if any, existing and continuing in the Bank should be terminated forthwith. Moreover the Government of Orissa in Agriculture and Co-operation Department had also instructed in letter No. 6579, dated the 17th April 1990 vide Ext. B to stop the appointments of all temporary and *ad hoc* posts. Both the documents vide Exts. A and B are carefully perused and examined by me in detail. In view of the above circular and order of the Government, the management, was therefore, constrained to terminate the services of the workman with effect from the 4th September 1990. That apart, it has been clearly established by the management that due to constant loss of the Bank, the services of the *ad hoc* employees including the services of the workman concerned were terminated. For the aforesaid reasons, I am of the view that the services of the workman were terminated with effect from the aforesaid date but whatever may be the reason for such termination, the principal issue appears to be as to whether the action of the management in terminating the services of the workman with effect from the 4th September 1990 is legal and/or justified. In this respect, I have already discussed in my foregoing paragraphs the legal position and the circumstances in which the services of the workman were terminated. Admittedly the appointments were on contract basis for specified period and the last contract period was from the 8th June 1990 to the 4th September 1990. Thereafter no further extension was given to him by the management resulting in automatic cessation of service. I am therefore, of the view that after termination of the contract, there being no renewal, the case of the concerned workman cannot be held to be retrenchment.

12. In the case of the Divisional Manager, Orissa State Cashew Development Corporation Ltd. Vrs. Presiding Officer, Labour Court and another reported in 2003 (Supp.) OLR 75, Their Lordships of our own Hon'ble High Court have clearly observed that "Appointments were on contract basis for specified period and after termination of contract, there being no renewal, case of the opposite party No. 2 cannot be held to be retrenchment". After carefully examining the evidence tendered by the parties being coupled with the proved documents and keeping in view the settled position of law, I am of the opinion that the action of the management in terminating the services of the workman with effect from the 4th September 1990 is legal and justified. In that view of the matter, the workman is not entitled to any relief as prayed for. Both the above issues are answered accordingly.



13. Hence it is ordered :

That the action of the management in terminating the services of Shri Bhaskar Prasad Mohanty, ex-Cadre Secretary of Khurda Central Co-operative Bank, Khurda with effect from the 4th September 1990 is legal and justified. In such view of the matter, the workman Shri Mohanty is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO  
30-7-2004  
Presiding Officer  
Labour Court  
Bhubaneswar.

P. K. SAHOO  
30-7-2004  
Presiding Officer  
Labour Court  
Bhubaneswar.

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By order of the Governor  
D. MISHRA  
Under-Secretary to Government